

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-7443

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CLYDE AUSTIN GRAY, JR., a/k/a Poochie,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Gerald Bruce Lee, District Judge. (1:09-cr-00326-GBL-2)

Submitted: September 15, 2015

Decided: October 16, 2015

Before MOTZ, WYNN, and FLOYD, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Clyde Austin Gray, Jr., Appellant Pro Se. Dana James Boente, United States Attorney, Alexandria, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Clyde Austin Gray, Jr., seeks to appeal the district court's order denying his Fed. R. Civ. P. 60(b) motion in which he sought reconsideration of the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. We previously placed this appeal in abeyance pending our decision in United States v. McRae, No. 13-6878, in which this court addressed whether an appeal from the dismissal of a Rule 60(b) motion as a successive, unauthorized § 2255 motion is subject to the certificate of appealability requirement. We have since held that a certificate of appealability is not required in that limited circumstance, but reaffirmed the holding in Reid v. Angelone, 369 F.3d 363, 369 (4th Cir. 2004), that the issuance of a certificate of appealability is a prerequisite to appellate consideration of an appeal from the denial of a true Rule 60(b) motion. United States v. McRae, 793 F.3d 392, 399-400 (4th Cir. 2015).

Thus, the district court's order denying Gray's Rule 60(b) motion is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies

this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Gray has not made the requisite showing. Accordingly, we deny Gray's motion for appointment of counsel, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED